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IN THE

Supreme Court of the United States

DANIEL TAYLOR JENKINS,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE SECOND CIRCUIT

BRIEF *AMICUS CURIAE* OF NEW YORK YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	i
STATEMENT OF INTEREST OF THE AMICUS CURIAE	1
ARGUMENT A. WAR AND THE SUPPORT OF WAR VIOLATE THE QUAKER RELIGIOUS CONVICTION	4
B. THE QUAKER PEACE TESTIMONY AND WITNESS AGAINST WAR	8
C. RELIGIOUS BELIEFS AND PRACTICES HAVE BEEN REPEATEDLY ACCOMMODATED BY GOVERNMENTS IN THE PAST	15
D. CONCLUSION	20

TABLE OF AUTHORITIES

	PAGE
CASES	
American Friends Service Committee v. United States, 368 F.Supp. 1176 (E.D.Pa. 1973), rev'd on procedural grounds, 419 U.S. 7 (3rd Cir. 1974)(per curiam)	13
Bowen v. Roy, 476 U.S. 693, 708 (1986) (plurality)	2
Cassius Marsellus Clay, Jr. v. United States, 403 U.S. 698 (1971)	3
City of Boerne v. Flores, 521 U.S. 507, 557-560 (1997)(O'Connor, J. dissenting)	2
Employment Div., Dept. of Human Resources of Ore. v. Smith, 494 U.S. 872, 884 (1990)	2
Lynch v. Donnelly, 465 U.S. 668, 673 (1984)	3
Packard v. United States, 7 F.Supp.2d 143 (2d Cir. 1999)	8, 14
United States v. Geary, 368 F.2d 144 (2d Cir. 1966)	17
United States v. Seeger, 380 U.S. 163 (1965)	17
United States v. Philadelphia Yearly Meeting,	13
CONSTITUTION, STATUTES AND RULES	
First Amendment	4, 20
Ninth Amendment	20
Internal Revenue Code, Section 6673	1

PAGE

Military Selective Service Act, § 6(j),
50 U.S.C. (App.) § 456(j) 17

Religious Freedom Restoration Act,
42 U.S.C. § 2000bb et seq 2, 19, 20

New York State Constitution of 1777, Article 40. 16

Sessions Laws of the State of New York:
1777-1800, Vols. I – IV 16

MISCELLANEOUS

Avalon Project, *The Fundamental Constitutions for the Province of East New Jersey in North America, Anno Domini 1683* (New Haven, Yale University, 2006). 17

Hugh Barbour, ed., *Quaker Crosscurrents: 300 Years of Friends in the New York Yearly Meetings* (Syracuse Univ. Press 1995) 13, 15, 16

Hugh Barbour and J. William Frost, *The Quakers* (New York, Westport, London: Greenwood Press 1988) 8

Robert Barclay, *An Apology for the True Christian Divinity*, (1676) 5

Ruth Benn and Ed Hedemann, *War Tax Resistance: A Guide to Withholding Your Support from the Military* (New York, War Resisters League, 2003). 10, 19

Peter Brock, *The Quaker Peace Testimony 1660 to 1914* (Sessions Book Trust,
York, England 1990 5, 6, 8, 9, 10, 11, 15, 16, 17, 18

PAGE

Sandra Cronk, *A Study of the Spiritual Basis of the Quaker Peace Testimony* (Philadelphia, Tract Association of Friends, 1984) 5, 6

John Edminster, *Jesus Christ Forbids War* (privately published, New York, 2005) 5

George Fox, Richard Hubberthorne and others, *Declaration "Against All Plotters and Fighters in the World"* addressed to Charles II (January 21, 1661) 5

Dean Freiday, ed., *Barclay's Apology in Modern English* (Newberg Oregon, The Barclay Press, 1991) 5, 6

Jack D. Marietta, *The Reformation of American Quakerism 1748-1783* (University of Pennsylvania Press, Philadelphia, 1984) 8

Phillips P. Moulton, ed., *The Journal and Major Essays of John Woolman* (New York 1971) 11

New Revised Standard Version – Holy Bible (New York, Oxford University Press, 1989) 5

New York Assembly Committee on the Militia and Public Defense, *Report No. 170, on the Memorial and Remonstrance of the Religious Society of Friends in the State of New York*, March 4, 1841 12, 13, 18

New York Yearly Meeting of the Religious Society of Friends, *Brief Amicus Curiae*,

PAGE

Packard v. United States, 7 F. Supp.
(D. Conn. 1998) 14

New York Yearly Meeting of the Religious Society of Friends, *Faith and Practice: The Book of Discipline of the New York Yearly Meeting of the Religious Society of Friends* (1995) 7

New York Yearly Meeting of the Religious Society of Friends, *Minutes and Proceedings of the 276th/277th Sessions* (New York, 1972) 14

New York Yearly Meeting of the Religious Society of Friends, *Minutes of Spring Sessions* (2006) 4, 6

New York Yearly Meeting of the Religious Society of Friends, *Minutes of Spring Sessions* (2007) 2

New York Yearly Meeting of the Religious Society of Friends, *Yearbook Directory 2005: Proceedings and Appointments* (2005) 19

John L. Nickalls, ed., *The Journal of George Fox* (London: Cambridge University Press 1952) 5, 6

John T. Noonan, *The Lustre of Our Country: The American Experience of Religious Freedom* (Univ. Calif. Press, 1998) 2, 3

Reports of the Proceedings and Debates of the Convention of 1821 Assembled for the Purpose of Amending the Constitution of the State of New York, Albany, 1821. 12

Saranac Lake Monthly Meeting and Northeast Regional Meeting of the Religious Society of Friends, *Minutes* (Saranac Lake, NY, 2005) 14

Allen C. Thomas, *A History of the Friends In America* (Philadelphia, John C. Winston Co., 1919) 9

BRIEF OF NEW YORK YEARLY MEETING AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER-APPELLANT

New York Yearly Meeting ("NYYM") of the Religious Society of Friends (also known as "Quakers") submits this brief, pursuant to Rule 37.2(a) of the Court's Rules, as a Friend of the Court[1] in support of the petition for a writ of certiorari of Petitioner-Appellant Daniel Taylor Jenkins to review the decision of the court below affirming summary judgment for Defendant-Appellee Commissioner of Internal Revenue and imposition of a penalty under section 6673 of the Internal Revenue Code of 1986. Petitioner-Appellant Daniel Jenkins has consented to NYYM's filing of the Amicus Brief, but the Solicitor General's office, in response to a request for consent, has declined to consent.

Statement of Interest of the *Amicus Curiae*

The peace testimony, or living out a commitment to peace, is a central tenet of the Quaker religion. Daniel Jenkins' refusal to pay taxes supporting war is an essential expression of his peace testimony. The Religious Society of Friends has a long history, tradition and practice of sincere opposition to warfare founded on deeply held religious beliefs and a history of advocating alternatives to violence for settling conflicts. The Daniel Jenkins case is one that presents these two core Quaker principles. Daniel Jenkins attends and is supported by a Clearness Committee of the Saranac Lake (New York) Monthly Meeting, which is one of

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[1] This brief is not authored in whole or in part by counsel for both parties, and no monetary contribution was made in support of its preparation or submission by any person or entity other than amicus and its counsel.

the local Quaker Meetings (congregations) within NYYM. On April 14, 2007, NYYM approved a minute to submit an amicus brief in support of Daniel Jenkins' petition for a writ of certiorari.[2]

The Quaker peace testimony significantly contributed to the development of the nation's conception of freedom of religion, and maintains an influential place in the national ethos.[3] Some of that history is described in Point A below.

This Court has instructed that "where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of 'religious hardship' without compelling reason." Employment Div., Dept. of Human Resources of Ore. v. Smith, 494 U.S. 872, 884 (1990), quoting Bowen v. Roy, 476 U.S. 693, 708 (1986) (plurality). Congress recognized this as the current policy of the United States in enacting the Religious Freedom Restoration Act, which requires the least restrictive feasible burden on exercise of religion.

The history of governmental acknowledgment of Quaker testimonies and witness demonstrates that requests for accommodation of religious conscience should be afforded careful consideration before being rejected on the basis of inchoate fears of pandemonium or burden. Some of that history of accommodation is summarized in Point C, below.

Quaker practice shares with the American judicial system belief in, and reliance upon, process - faith in the force of reason and reasoning together - to assure correct and

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[2] New York Yearly Meeting (NYYM) of the Religious Society of Friends, Minutes of Spring Sessions 2007 at 5, www.nyym.org.

[3] See John T. Noonan, Jr., *The Lustre of Our Country: The American Experience of Religious Freedom* (Univ. Calif. Press, 1998) (hereinafter cited as "Noonan"), at 51-54, 72-74, 89-91, 222; City of Boerne v. Flores, 521 U.S. 507, 557-560 (1997)(O'Connor, J., dissenting).

legitimate outcomes on a case-by-case basis. The apparent unwillingness or failure of the courts below to provide a discerning and particularized consideration of the merits of Daniel Jenkins' claim, as detailed in his petition, is a matter of great concern to Quakers because it suggests an improper judicial toleration of an infringement of religious conscience. Cf. Cassius Marsellus Clay, Jr. v. United States, 403 U.S. 698 (1971) (Conscientious objector determinations must be made on an individualized basis and not through application of a presumption or "rule of law" as to applicant's religious sincerity). As Judge John T. Noonan explains in discussing James Madison and the intent of the Religion Clauses:

> In the ultimate and absolute relation of each individual to God lies the limitation on civil society and civil government on which JM insists. Without that relation, why should the individual not be absorbed by the community, why should a society be constrained to respect conscience? With that relation to a Creator, Governor, Judge in existence for each individual, with that personal responsibility to a personal God, a government of human beings must be a government of limited powers.[4]

Modern Constitutional analysis, particularly as to the Religion Clauses, frequently employs a substantial historical review to discern the probable intent of the Framers. See, e.g., Lynch v. Donnelly, 465 U.S. 668, 673 (1984). In this spirit, the discussion below highlights (i) the history and religious character of the Society of Friends' opposition to warfare, including Quakers' peace tax witness, and (ii) the

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[4] Noonan at 89.

long history of governmental acknowledgment of Friends' practices and beliefs in recognition of the mandate of the First Amendment's Free Exercise of Religion Clause.

ARGUMENT

A. WAR AND THE SUPPORT OF WAR VIOLATE THE QUAKER RELIGIOUS CONVICTION

On April 1, 2006, NYYM approved the following minute:

> The Living Spirit works in the world to give life, joy, peace and prosperity through love, integrity and compassionate justice among people. We are united in this Power. **We acknowledge that paying for war violates our religious conviction.** We will seek ways to witness to this religious conviction in each of our communities [emphasis added].[5]

Quaker "minutes" are recorded decisions, based on a unity of spirit upon plenary consideration of a matter. This minute was approved in the context of a long history of Quaker objection to warfare, based on religious faith and practice. The Quaker peace testimony began with a 1661 declaration by English Quakers to King Charles I that:

> We do utterly deny all outward wars and strife and fightings with outward weapons, for any end or under any pretense whatsoever. And this is our testimony to the whole world... The spirit of Christ, by which we are guided, is not changeable, so as once to command us from a thing as evil and again to move unto it; we do certainly know, and do testify to the world,

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[5] New York Yearly Meeting (NYYM) of the Religious Society of Friends, Minutes of Spring Sessions 2006 at 3.

> that the spirit of Christ, which leads us into all Truth, will never more move us to fight and war against any man with outward weapons, neither for the Kingdom of Christ, nor for Kingdoms of this world.[6]

The Quaker understanding of peace comes primarily from the life and ministry of Jesus Christ,[7] who taught his hearers at the Sermon on the Mount not to fight but to love and pray for their enemies.[8] To become a member of this Person of Christ is to become incapable of waging war, for wars "come from uncontrolled desires, and the determination to snatch by force what God may not be granting."[9] The biblical and theological basis of Quaker conscientious objection to all wars was first documented by Quaker theologian Robert Barclay in 1676. Barclay wrote that "War is absolutely unlawful for those who would be disciples of Christ. . . Christ says that 'we should love our enemies' but war teaches us to hate and destroy them."[10] To turn away

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[6] Declaration "Against All Plotters and Fighters in the World" addressed to Charles II by George Fox, Richard Hubberthorne and 10 other Friends, January 21, 1661; quoted in John L. Nickalls, ed., *The Journal of George Fox* (London: Cambridge University Press 1952)(hereinafter cited as "Journal of George Fox") at 399-400; see also Peter Brock, The Quaker Peace Testimony 1660 to 1914 (Sessions Book Trust, York, England 1990) (hereinafter cited as "Brock"), at 25.

[7] Sandra Cronk, *A Study of the Spiritual Basis of the Quaker Peace Testimony* (Philadelphia, Tract Association of Friends, 1984)(hereinafter cited as "Cronk") at 4.

[8] *New Revised Standard Version – Holy Bible*, (New York, Oxford University Press, 1989) Matt. 5:43-45 (hereinafter cited as "Holy Bible"), as quoted in John Edminster, *Jesus Christ Forbids War* (New York, 2005)(hereinafter cited as "Edminster") at 1.

[9] Holy Bible, James 4:1-3 as quoted in Edminster at 1.

[10] Robert Barclay, *An Apology for the True Christian Divinity* (1676) quoted at Dean Freiday, ed., *Barclay's Apology in Modern*

from such destructive desires, Quakers believe in turning toward a Power, a "Living Spirit" that "works in the world to give life, joy, peace and prosperity"[11]. George Fox, the founder of the Quaker movement, encountered that Spirit when an inner voice declared to him "There is one, even Christ Jesus, that can speak to thy condition."[12] Fox found that by coming into relationship with Christ, his life was transformed and as a result, the occasion of war had been removed from his life.[13] When Commonwealth commissioners asked Fox to accept an officer's commission in the militia, he responded:

> I told them I lived in the virtue of that life and power that took away the occasion of all wars and I knew from whence all wars did rise, from the lust according to James's doctrine ... I told them I was come into the covenant of peace which was before wars and strifes were.[14]

This quotation and the above 1661 declaration to Charles I have been familiar and treasured passages to generations of Quakers. As expressions of the peace testimony, these statements along with Barclay's exposition of pacifism in the Apology formed the foundation for a firm stance of conscientious objection to war as the "established practice of the Society of Friends."[15]

English (Newberg Oregon, The Barclay Press, 1991)(hereinafter cited as "Barclay") at 427.

11 NYYM, footnote 5, at 3.

12 *The Journal of George Fox* at 11.

13 Cronk at 13.

14 See Cronk at 11 and Brock at 14.

15 See Brock at 31

For Quakers, beliefs and action are necessarily integrated. Friends seek to make real their faith and concerns through personal acts ("witness and testimony"). The peace testimony calls Quakers to personal witness to support the end of warfare and the promotion of nonviolent alternatives for resolving disputes. This is reflected in Advice # 14 of NYYM's *Faith and Practice*:

> Friends are earnestly cautioned against the taking of arms against any person, since "all outward wars and strife and fightings with outward weapons" are contrary to our Christian testimony. Friends should beware of supporting preparations for war even indirectly, and should examine in this light such matters as non-combatant military service, cooperation with conscription, employment or investment in war industries, and **voluntary payment of war taxes** . . . . Friends are advised to maintain our testimony against war by endeavoring to exert an influence in favor of peaceful principles and the settlement of all differences by peaceful methods. They should lend support to all that strengthens international friendship and understanding and give active help to movements that substitute cooperation and justice for force and intimidation [emphasis added].[16]

This Advice and the NYYM minute reflect the Quaker understanding that coerced participation in military activities

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[16] New York Yearly Meeting of the Religious Society of Friends (Quakers), *Faith and Practice: The Book of Discipline of the New York Yearly Meeting of the Religious Society of Friends* (New York, 1998) at 60-61.

is an affront to the Quaker peace testimony, since "paying for war violates our religious conviction"[17] and "we do utterly deny all outward wars and strife and fightings with outward weapons, for any end or under any pretense whatsoever"[18]. In response to arguments that Quakers as citizens are obligated to pay for war along with other government obligations, Friend Samuel Allinson argued in 1780 that "war was a state closer to anarchy than to government or law, and that all the obligations that a citizen may tacitly incur does not oblige him to support the antithesis of civil society."[19] He concluded that "if we [Quakers] are forbidden . . . . personally to engage in war . . . . we ought not mediately to promote it by actively giving our money to that use."[20]

NYYM previously registered these concerns in federal court, when it filed two amicus briefs in *Packard v. United States*, 7 F.Supp.2d 143(2d Cir. 1999), another case concerning an individual's refusal to pay taxes for military purposes.

B. THE QUAKER PEACE TESTIMONY AND WITNESS AGAINST WAR

The Framers of the Constitution, meeting in Philadelphia in 1787, were familiar with the beliefs and practices of Quakers, for Philadelphia was not only the capital of the confederated states, but also the major population center of Quakers in North America.[21] The Quakers were well-known not only for

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17 NYYM, footnote 5 at 3.

18 Brock, footnote 6.

19 Allinson Papers, Box 11B, 1780, as quoted in Jack D Marietta, *The Reformation of American Quakerism 1748-1783* (University of Pennsylvania Press, Philadelphia, 1984) at 264 (hereinafter cited as "Marietta").

20 See Marietta at 262.

21 Hugh Barbour and J. William Frost, *The Quakers* (New York, Westport, London: Greenwood Press 1988) at 154 (hereinafter

their refusals based on religious scruples to serve in military units, but also for refusing to cooperate with requisitions for military use, to the extent of even refusing to sell or to grind grain for George Washington's army.[22] No doubt some of the convention delegates knew about the accommodations that various states, notably New York, had made to Quakers by granting them exemptions from military service (below at Point C). In this context, what would have been the Framers' "original intent" concerning such accommodations of religious beliefs? It is entirely reasonable that they would have provided exemptions from paying military taxes to those whose religious beliefs forbade them from supporting military activities. There was no income tax, standing army or universal conscription during that period. After the Revolution, requisitions of troops and materiel were reserved to the state militias and the state militia laws usually provided exemptions to Quakers.[23] The Framers knew that the federal government would not be collecting taxes for military purposes, or otherwise forcing the population's support of war activities. Rather, the state and confederation governments supported liberty of conscience by accommodating religious beliefs that preclude individuals from participation in war (below at Point C).

An evolving expression of the peace testimony, known as "tax witness" is the refusal to pay taxes levied and expended for military purposes. For nearly three hundred years, Friends have had their religion burdened by the inconsistency of paying for a war effort while refusing to otherwise participate

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cited as "The Quakers"), and Allen C. Thomas, *A History of the Friends In America* (Philadelphia, John C. Winston Co., 1919) at 103.

[22] Brock at 148.

[23] Brock at 156.

in warfare.[24] Refusal to pay war taxes in the United States was mostly practiced in the historic peace churches, including the Quakers, the Shakers, the Mennonites and the Brethren before World War II.[25] The Quakers were opposed to paying for war as long ago as colonial times and during the Revolutionary War (1670s – 1783)[26]. For example, in 1755, while the Pennsylvania Assembly was debating raising funds "for the king's use" in the French and Indian War, a delegation of 20 Quakers addressed the Assembly in opposition to the raising of money for the war. They expressed willingness to pay taxes for peaceable purposes, such as "to cultivate our friendship with our Indian neighbors and to support such of our fellow subjects who are or may be in distress"; but with respect to monies destined for war purposes, they warned that "many among us will be under the necessity of suffering rather than consenting thereto by the payment of a tax for such purposes".[27]

When the tax to funding the war became law, these Friends published "An Epistle of Tender Love and Caution to Friends in Pennsylvania" to explain the basis for this testimony and to encourage others to follow their faith in refusing to contribute to war taxes:

> And being painfully apprehensive that the large sum granted by the late Act of Assembly for the King's use is principally intended for

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24 See Brock at 184-196.

25 Ruth Benn and Ed Hedemann, *War Tax Resistance: A Guide to Withholding Your Support from the Military* (New York, War Resisters League, 2003)(hereinafter cited as "Benn") at 72.

26 Brock at 184-196

27 Brock at 117.

> purposes inconsistent with our peaceable testimony, we therefore think that as we cannot be concerned in wars and fightings, so neither ought we to contribute thereto by paying the tax directed by the said Act.[28]

In 1776, during the Revolutionary War, Philadelphia Yearly Meeting approved a minute "that a tax levied for the purchasing of drums, colours, and other warlike purposes, cannot be paid consistent with our Christian testimony."[29] Similar positions were expressed in opposition to taxes imposed to retire the debt from the Revolutionary War, import duties used[30] to finance the War of 1812, and to a lesser extent, taxes imposed during the Civil War.

In 1821, Quakers in New York State presented a memorial to the state Constitutional Convention requesting an amendment that would exempt Quakers not only from

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[28] *The Journal and Major Essays of John Woolman*, Phillips P. Moulton, ed. (New York, 1971), at 85-86; quoted and discussed in Brock at 118.

[29] Quoted in Brock at 190. Two years later another broader minute was approved which declared: *We find in several different quarters a religious scruple hath appeared and increases among Friends, against the payment of taxes, imposed for the purpose of carrying on the present war; they being deeply concerned and engaged faithfully to maintain our Christian testimony against joining with or supporting the spirit of wars and fightings, which hath remarkably tended to unite us in a deep sympathy with the seed of life in their hearts.... [Friends are urged] to avoid complying with the injunctions and requisitions made for the purpose of carry on war, which may produce uneasiness to themselves and tend to increase the sufferings of their brethren.*

[30] See Brock at 194-196.

bearing arms, but also "from incurring any fine or penalty in lieu thereof." [31] The memorial explained that:

> The obligation they feel themselves under, not to comply with any military requisitions, nor to pay any equivalent, is founded . . . not only on the doctrines of the Christian religion, but derived from the undeniable dictates and the unalienable rights of conscience, which can neither be communicated nor controlled by human authority; but which belongs essentially to the relation existing between man and his Creator.[32]

In 1841, New York Quakers presented a Memorial and Remonstrance to the State Assembly requesting that members of the Society be exempted from fine or imprisonment for non-performance of military duty (including payment of the militia commutation tax).[33] The Report of the Assembly's Committee on the Militia and Public Defense noted:

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[31] *Reports of the Proceedings and Debates of the Convention of 1821 Assembled for the Purpose of Amending the Constitution of the State of New York*, Albany, 1821 (hereinafter cited as "*Reports of 1821 Convention*") at 575.

[32] *Reports of 1821 Convention* at 575.

[33] *New York Assembly Committee on the Militia and Public Defense, Report No. 170, on the Memorial and Remonstrance of the Religious Society of Friends in the State of New York*, March 4, 1841 (hereinafter cited as "*1841 Assembly Committee Report*") at 1.

> That they [the Quakers] have given to the subject such consideration as its importance and the highly respectable character of the memorialists seemed to demand. The memorial contains an eloquent and elaborate defense of the conscientious objections entertained by the Religious Society of Friends in the State of New York, against bearing arms, or in any manner sustaining or countenancing war.[34]

During the last thirty-five years, Quaker organizations have sought to support individual refusals to pay taxes destined for military purposes. For example, many Friends and Quaker organizations, including New York Yearly Meeting, refused to pay the federal telephone tax imposed to help finance the Vietnam War.[35] As well, the American Friends Service Committee objected to being compelled to withhold taxes from the wages of Quaker employees who were refusing to pay taxes being used, in part, to fund warfare.[36] And Philadelphia Yearly Meeting refused to comply with levies on wages of employees who were engaging in war tax protests.[37]. Similarly, NYYM has a recorded minute supporting NYYM staff who choose not to

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[34] *1841 Assembly Committee Report* at 1.

[35] *Quaker Crosscurrents: 300 Years of Friends in the New York Yearly Meetings*, Hugh Barbour, ed. (Syracuse Univ. Press, 1995) (hereinafter cited as "*Quaker Crosscurrents*"), at 313.

[36] *American Friends Service Committee v. United States*, 368 F.Supp. 1176 (E.D.Pa. 1973) rev'd on procedural grounds, 419 U.S. 7 (3rd Cir. 1974)(per curiam)

[37] *United States v. Philadelphia Yearly Meeting*, 753 F.Supp. 1300 (E.D.Pa. 1990)

pay a portion of their taxes for reasons of conscience.[38] In addition, in February 1991, Purchase Quarterly Meeting, a constituent meeting of NYYM, established the Peace Tax Escrow Fund utilized by tax witnesses, and continues to administer the Fund. Purchase Monthly Meeting regularly records the amount of interest and penalties seized from tax witnesses as a minute of suffering for religious conscience.[39]

Similarly, Northeastern Regional Meeting and Saranac Lake Monthly Meeting have united in support of the testimony of Appellant Daniel Jenkins in this case.[40]

Conscientious objection to military service, as exhibited by Fox's refusal (supra, pp. 5), is the oldest and most familiar expression of Friends' peace testimony. By the middle of the eighteenth century, the absolute refusal of Quakers to fight was so familiar that at least five colonies -- New York, Virginia, Massachusetts, North Carolina and Rhode Island -- allowed Quakers to be exempted from the military service obligatory for other able-bodied males. (Pennsylvania, more heavily Quaker, did not even adopt a

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[38] *Minutes and Proceedings of the 276th/277th Sessions of New York Yearly Meeting of the Religious Society of Friends*, Minute #117, at 23 & Minute #20, at 73 (July 25-August 1, 1971 & July 30-August 6, 1972).

[39] New York Yearly Meeting of the Religious Society of Friends, *Brief Amicus Curiae*, *Packard v. United States*, 7 F.Supp.2d 143 (2d Cir. 1999) at 9.

[40] Saranac Lake Monthly Meeting, NYYM of Religious Society of Friends, *Minutes of February 19, 2006* and Northeastern Regional Meeting, NYYM of Religious Society of Friends, *Minutes of February 25, 2006*.

military conscription act until 1775.)[41] Conscientious objection by Quakers in the United States has continued to be an important expression of the peace testimony in all the major wars, from the Revolution to the present.[42]

The peace testimony has also led to witness against war by actions reflective of Friends' belief that no human being can be deemed an "enemy". For example, Quakers worldwide were awarded the Nobel Peace Prize in 1947 for their postwar relief work. As they have done in numerous violent conflicts over three centuries, Friends acted to provide medical supplies and other relief assistance to all sides during the Vietnam War and the more recent struggles in Bosnia, Rwanda and Iraq. Quaker advocacy groups in Washington (Friends Committee on National Legislation) and in New York and Geneva (Quaker United Nations Office) also work actively with Congress and the United Nations to develop alternatives to force and coercion in national and international affairs.[43] Thus, the Quaker peace testimony is only in part a refusal of war; it is a broader tenet about actively respecting and supporting life.

C. RELIGIOUS BELIEFS AND PRACTICES HAVE BEEN REPEATEDLY ACCOMMODATED BY GOVERNMENTS IN THE PAST

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41 Brock at 48.

42 See, *e.g.*, Brock at 142-183 & 290-298.

43 Quaker Crosscurrents at 253, 281, 304-307, 312.

Exemptions not only from military service, but also from taxation to support the military, have been enacted with no adverse effects.

Quaker opposition to military service was recognized and accommodated even during the American Colonial and Revolutionary War eras, and exemptions from military service on grounds of religious conscience have been continued to the present. At least five colonies exempted Quakers from military service.[44] During the Revolutionary War, both the Continental Congress and colonial governments afforded exemption from military service for Quakers and other religious conscientious objectors.[45] The New York State Constitution of 1777 specifically mentioned Quakers and included the right to refuse to bear arms due to religious scruples.[46] On the Federal level, conscientious objection to military service has long received governmental recognition.[47] When the first federal universal military

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[44] Brock at 48.

[45] Brock at 146-147; see, *e.g.*, *Sessions Laws of the State of New York: 1777-1784*, Vol. I, at 49.

[46] Quaker Crosscurrents at 53. *New York State Constitution of 1777* at Article 40 states "That all such inhabitants of this State, being of the people called Quakers as, from their scruples of conscience, may be averse to the bearing of arms, be therefrom excused by the legislature, and do pay to the state such sums of money, in lieu of their personal service, as the same; may in the judgement of the legislature, be worth."

[47] Indeed, James Madison even attempted to include a clause for exempting conscientious objectors in the Bill of Rights. See Brock at 156.

service draft was enacted during the Civil War, Congress adopted acts in March, 1863 and February, 1864 exempting from service "members of religious denominations, who shall by oath or affirmation declare that they are conscientiously opposed to the bearing of arms, and who are prohibited from doing so by the rules and articles of faith and practice of said religious denominations...."[48] Every subsequent draft law has included various exemptions for persons whose religious conscience precluded their accepting military service.[49]

Colonial and later state governments, starting in 1683, provided exemptions from paying taxes or contributions levied for military purposes to persons whose religious scruples preventing them from making such payments. The East New Jersey Constitution had the following provisions:

> . . . . none of the Proprietors and other inhabitants may be forced to contribute any money for the use of arms, to which conscience sake they have not the freedom . . . [but] shall on the other hand bear so much in other charges, as may make up that portion in the general charge of the Province."[50]

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[48] See Brock at 169. These acts generally required the provision of some alternative civilian service or the payment of a commutation or substitution fee.

[49] See, *e.g.*, *United States v. Seeger*, 380 U.S. 163, 170-171 (1965); *United States v. Geary* , 368 F.2d 144, 147-148 (2d Cir. 1966); Military Selective Service Act, § 6(j), 50 U.S.C. (App.) § 456(j).

[50] Avalon Project, *Fundamental Constitutions for the Province of East New Jersey in North America, Anno Domini 1683* (New Haven, Yale University, 2006) at Section VII.

Note that by having those exempted "bear so much in other charges", the taxes were being redirected to non-military purposes, not cancelled or forgiven. Daniel Jenkins has requested that the portion of his taxes in dispute, which have been placed in an escrow account, be similarly redirected; he has not requested a reduction or refund.

Quakers persistently petitioned New York authorities for exemptions from paying taxes or commutation fees levied for military purposes. This resulted in New York providing sometime before 1841 that militia commutation taxes not be used for military purposes, but rather be paid into county treasuries, as noted in the New York Assembly Militia and Public Defense Committee report responding to the 1841 Memorial and Remonstrance (see Point B above). The Committee report noted that the state law at that time not only relieved "...every person conscientiously averse to bearing arms...", but also "...from all liability to contribute, even indirectly, to military purposes."[51] Similarly, Congress during the Civil War specifically accommodated Quaker conscientious objections to the payment of "war taxes" by providing that the commutation fee to be paid for exemption from military service was to be applied solely to humanitarian purposes.[52] These two examples represent significant statutory acknowledgements by state and federal authorities of the need to accommodate liberty of conscience.

The success of such prior governmental accommodation of Quaker testimonies demonstrates that providing exemptions from military requisitions to

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[51] 1841 Assembly Committee Report at 3.

[52] See Brock at 169-170. The Act provided that conscientious objectors who chose not to perform alternative civilian service "shall pay the sum of three hundred dollars... to be applied to the benefit of the sick and wounded soldiers."

accommodate religious beliefs need not result in imposition of a burden in the administration of taxes.

As indicated by the examples above, the federal income tax can be administered so as to accommodate the peace testimony. In 1972, legislation was first introduced to do just that: create a Peace Tax Fund, to permit conscientious objectors to direct the portion of their taxes normally spent for military purposes to non-military programs. Implementation could be as simple as the tax diversion check-box on the current IRS Form 1040, which has for years earmarked tax dollars for election campaign financing. Peace Tax Fund legislation has been introduced in every Congress since then.[53] NYYM supports the National Campaign for a Peace Tax Fund and appoints representatives to serve on its national board.[54]

Religious Freedom Restoration Act's mandate to utilize "the least restrictive means"[55] would appear to support the accommodation of Quaker belief in this circumstance. Since the Federal Government was able to accommodate the Quaker peace testimony during the Civil War by allocating commutation fees to humanitarian purposes, and the Internal Revenue Service today is able to administer the voluntary campaign finance check-off without suffering undue burden, surely Daniel Jenkins' tax witness may be accommodated

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[53] Benn at 125.

[54] New York Yearly Meeting of the Religious Society of Friends, *NYYM Yearbook Directory 2005: Proceedings and Appointments* (New York, 2005) at 59.

[55] 42 U.S.C. § 2000bb-1(b)(2).

pursuant to the Religious Freedom Restoration Act. He paid all his taxes into escrow in this hope and expectation.

The long history of multifaceted governmental accommodation of Friends' and other religious communities' practices reflects the profound respect for acts of religious conscience protected from disparagement by the First and Ninth Amendments and the Religious Freedom Restoration Act. Because accommodation entails modification of rules or requirements of general application, requests for accommodation may appear burdensome or unmanageable to the magistrate or administrator saddled with responsibility for executing a law. But the nearly three hundred years of history of government accommodation cited above shows that it can be done.

D. CONCLUSION

For all the foregoing reasons, together with those set forth in the briefs of Petitioner-Appellant Daniel T. Jenkins, Amicus Curiae New York Yearly Meeting of the Religious Society of Friends urges the Court to grant the petition for a writ of certiorari.

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Respectfully submitted,

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